

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 1, 2008

MISTY NANETTE BROOKS v. STEPHEN EARL BROOKS

Appeal from the Fourth Circuit Court for Knox County
No. 106794 Bill Swann, Judge

No. E2007-01250-COA-R3-CV - FILED APRIL 23, 2008

In August of 2007, Misty Nanette Brooks (“Wife”) obtained an order of protection from Stephen Earl Brooks (“Husband”) following a hearing before the Trial Court. Husband was not present at the hearing. On appeal, Husband claims it was his attorney’s fault that he was not present at the hearing. We note, however, that Husband did not file a Tenn. R. Civ. P. 60 motion for relief from the judgment with the Trial Court, and Husband ascribes no particular error to the Trial Court’s judgment based on the proof presented at the hearing. Further, this Court has not been provided either a transcript from the hearing or a statement of the evidence. Accordingly, the judgment of the Trial Court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Fourth Circuit Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Stephen Earl Brooks, pro se Appellant.

Camellia Saunders, Knoxville, Tennessee, for the Appellee, Misty Nanette Brooks.

MEMORANDUM OPINION¹

This case began when Wife filed a petition seeking an order of protection from Husband. Wife claimed that, following an argument with Husband, he began throwing things around the house, punched a hole in the wall, "slung" Wife around the garage, and grabbed her around the neck. An order of protection was entered by the Trial Court in August of 2007. Husband was not present at the hearing. Husband appeals from the entry of that order.

On appeal, Husband essentially claims that it was his attorney's fault that he was not present at the hearing. In making this argument, none of the "facts" as alleged by Husband in his brief are contained in the record on appeal. Assuming for present purposes only that Husband is correct that it was his attorney's fault that he was not present at the hearing, Husband's appeal from the order of August 2007 is not the proper avenue for him to seek relief. Husband neither filed a Tenn. R. Civ. P. 60 motion for relief from the judgment, nor does he claim any specific error was committed by the Trial Court based on proof given at the hearing. In addition, we have not been provided a transcript from the hearing or a statement of the evidence. As we have stated many times, "[t]his court cannot review the facts de novo without an appellate record containing the facts, and therefore, we must assume that the record, had it been preserved, would have contained sufficient evidence to support the trial court's factual findings." *Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992). Husband's appeal is without merit and the judgment of the Trial Court is, therefore, affirmed.

Conclusion

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for collection of the costs below. Costs on appeal are taxed to the Appellant, Stephen Earl Brooks.

JUDGE D. MICHAEL SWINEY

¹ Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."